

ALI Databases maintained by local exchange carriers (and, in at least one case, a state government) across the country. Third, the Order requires all providers of interconnected VoIP service specifically to advise new and existing subscribers of the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service, and to obtain and keep a record of affirmative acknowledgement by every subscriber of having received and understood this advisory.<sup>242</sup> Fourth, the Order requires all interconnected VoIP providers to submit a letter to the Commission detailing their compliance with the rules set forth in the Order no later than 120 days after the effective date of the Order.<sup>243</sup>

80. We also impose other requirements on providers of interconnected VoIP service. Specifically, the Order requires that, within 120 days of the effective date of the Order, an interconnected VoIP provider must transmit all 911 calls, as well as a call back number and the caller's Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers under section 64.3001 of the Commission's rules.<sup>244</sup> These calls must be routed through the use of ANI<sup>245</sup> via the dedicated Wireline E911 Network,<sup>246</sup> and the Registered Location must be available from or through the ALI Database. As explained in the Order at paragraph 42, *supra*, however, an interconnected VoIP provider need only provide such call back and location information as a PSAP, designated statewide default answering point, or appropriate local emergency authority is capable of receiving and utilizing. The obligation to determine what type of information, such as ALI or ANI, each PSAP is capable of receiving and utilizing rests with the provider of interconnected VoIP services.<sup>247</sup>

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

81. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>248</sup>

82. The *Notice* invited comment on a number of alternatives to the imposition of 911/E911 obligations on providers of interconnected VoIP service. For instance, the *Notice* specifically sought comment on the effectiveness of alternatives to direct regulation to achieve the Commission's public policy goals of ensuring the availability of 911 and E911 capability.<sup>249</sup> The Commission also sought

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<sup>242</sup> See Order, *supra*, at para. 48.

<sup>243</sup> See *id.* at para. 50.

<sup>244</sup> 47 C.F.R. § 64.3001; see also *N11 Codes Fifth Report and Order*, 16 FCC Rcd 22269-77, paras. 10-31.

<sup>245</sup> Providers must also use Pseudo-ANI if necessary. The terms "ANI" and "Pseudo-ANI" as used herein have the same meanings as those set forth in section 20.3 of the Commission's rules. 47 C.F.R. § 20.3.

<sup>246</sup> The term Wireline E911 Network is defined in the Order, *supra*, at para. 14.

<sup>247</sup> See Order, *supra*, at para. 43.

<sup>248</sup> 5 U.S.C. § 603(c).

<sup>249</sup> See *Notice*, 19 FCC Rcd at 4900, para. 56.

comment on whether voluntary agreements among public safety trade associations, commercial IP-stakeholders, consumers, and state and local E911 coordinators and administrators could lead to VoIP subscribers receiving enhanced 911 functionality, and what the Commission could do to facilitate such agreements.<sup>250</sup> The Commission also asked whether “promulgation of best practices or technical guidelines [would] promote the provision of effective IP-based E911 services.”<sup>251</sup> The Commission also asked how it could provide for technological flexibility so that our rules allow for the development of new and innovative technologies in the event it concluded that mandatory requirements would be necessary.<sup>252</sup>

83. In addition, the Commission sought comment on more general issues surrounding the possible imposition of a 911/E911 requirement for IP-enabled services, which could have prompted commenters to suggest other alternatives to the rules adopted today. For instance, the Commission sought comment on what ways IP-enabled service providers currently seek to provide a emergency services to their customers.<sup>253</sup> The Commission also noted that the development and deployment of IP-enabled services is in its early stages, that these services are fast-changing and likely to evolve in ways that it cannot anticipate, and that imposition of regulatory mandates should be undertaken with caution.<sup>254</sup> In this regard, the Commission sought comment on how to weigh the potential public benefits of requiring emergency calling and other public safety capabilities against the risk that regulation could slow technical and market development.<sup>255</sup>

84. The Commission has considered each of the alternatives described above, and in today’s Order, imposes minimal regulation on small entities to the extent consistent with our goal of ensuring that users of interconnected VoIP service have access to appropriate emergency services when they dial 911. As an initial matter, the Commission limited the scope of today’s Order to interconnected VoIP service providers. As a result, certain VoIP service providers are not subject to the E911 obligations imposed in today’s Order. Specifically, today’s Order does not apply to those entities not fully interconnected with the PSTN. Because interconnecting with the PSTN can impose substantial costs, we anticipate that many of the entities that elect not to interconnect with the PSTN, and which therefore are not subject to the rules adopted in today’s Order, are small entities. Small entities that provide VoIP services therefore also have some control over whether they will be subject to the E911 obligations adopted today. Small businesses may still offer VoIP service without being subject to the rules adopted in today’s Order by electing not to provide an *interconnected* VoIP service.<sup>256</sup>

85. However, as stated above, we must assess the interests of small businesses in light of the overriding public interest in access to E911 services when using interconnected VoIP services. The Order discusses that E911 service is critical to our nation’s ability to respond to a host of crises and that the public has come to rely on the life-saving benefits of such services in emergency situations.<sup>257</sup> Therefore, the Commission concluded that it was important for *all* interconnected VoIP service providers to participate in protecting public safety, regardless of their size. The Commission therefore rejected

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<sup>250</sup> See *id.* at 4900-01, para. 56.

<sup>251</sup> See *id.* at 4901, para. 56.

<sup>252</sup> See *id.* at 4901, para. 56.

<sup>253</sup> See *id.* at 4899, para. 53.

<sup>254</sup> See *id.* at 4898, para. 53.

<sup>255</sup> See *id.* at 4898-99, para. 53.

<sup>256</sup> See *supra*, Order, Section III.A.

<sup>257</sup> See, e.g., *id.* at paras. 4-5.

solutions that would rely on the voluntary agreement of VoIP service providers. The record indicated that this alternative had not resulted in, and was not likely soon to result in, ubiquitous access to E911 among users of interconnected VoIP service, which is the Commission's goal.

86. While the rules adopted today apply to all providers of interconnected VoIP service, the Commission attempted to minimize the impact of the new rules on all entities, including small entities. For instance, while it is essential that interconnected VoIP service providers interconnect with the Wireline E911 Network, the Commission employed performance rather than design standards to achieve this result. Thus, rather than mandating a particular technical solution, the Order allows interconnected VoIP providers to connect directly to the Wireline E911 Network, or connect indirectly through a third party, such as a competitive local exchange carrier, or through any other solution that allows a provider to offer E911 service, which thereby allows for technological and commercial flexibility, and leaves room under the new rules for the development of new and innovative technologies.<sup>258</sup> The Commission also declined to specify any particular method by which interconnected VoIP service providers must enable their customers to provide and update their Registered Location. The Commission also declined to specify any particular method by which interconnected VoIP service providers must advise new and existing subscribers of the E911 service limitations of their interconnected VoIP service and declined to specify any particular method by which acknowledgments of such limitations must be gathered and stored. The Commission expects these decisions will help small entities comply with the rules adopted today in the most practical means possible. In addition, the Commission today imposes straightforward and limited reporting requirements, and sets reasonable timetables. For example, regarding reporting requirements, the Commission simply requires providers of interconnected VoIP service to file a letter detailing their compliance with our rules no later than 120 days after the effective date of this Order.<sup>259</sup> In addition, while the Commission's review of the record in this proceeding convinces us that ensuring reliable E911 service for users of interconnected VoIP service is essential, and therefore that the location information of such users who dial 911 should automatically be sent to the relevant PSAP, the Commission did not impose the obligation today automatically to locate the interconnected VoIP service user in light of record evidence of the current state of technological development and the costs, including on small entities, of such an obligation today. The Commission fully expects this situation to change in the near future, helped in part by the present Order.

87. We also note that by adopting E911 rules for providers of interconnected VoIP service at the present time, the Commission likely has saved small entities providing these services resources in the long run. For instance, in light of the importance of E911 service to the public, providers of interconnected VoIP service likely eventually would have been required by the Commission or Congress to provide E911 service. This could have involved "costly and inefficient 'retrofitting' of embedded IP infrastructure" for any interconnected VoIP service provider that had already adopted a E911 solution.<sup>260</sup>

88. **Report to Congress:** The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>261</sup> In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>262</sup>

<sup>258</sup> See Order, *supra*, at para. 38; see also Notice, 19 FCC Rcd at 4901, para. 56.

<sup>259</sup> See Order, *supra*, at para. 50.

<sup>260</sup> See Notice, 19 FCC Rcd at 4901, para. 57.

<sup>261</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>262</sup> See 5 U.S.C. § 604(b).

## II. Initial Regulatory Flexibility Analysis

89. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>263</sup> the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>264</sup> In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>265</sup>

### A. Need for, and Objectives of, the Proposed Rules

90. In the *NPRM*, we seek comment on what additional steps the Commission should take to ensure that providers of VoIP services that interconnect with the nation's existing public switched telephone network – “interconnected VoIP service” – provide ubiquitous and reliable E911 service.<sup>266</sup> Due to the existing state of technology, the Order adopted today relies on users to provide the location information that will be delivered to PSAPs in an emergency, and thus is an immediate step toward a more advanced solution in which the user automatically can be located without assistance from the user. The *NPRM* seeks comment on: what the Commission can do to further the development of this new technology; whether the Commission should expand the scope and requirements of this Order; the role states can and should play in the implementation thereof; the need for consumer privacy protections; the need for stronger customer notification practices relating to 911 service; and whether persons with disabilities can use interconnected VoIP service and other VoIP services to directly call a PSAP via a TTY in light of the requirement in Title II of the Americans with Disabilities Act (ADA) that PSAPs be directly accessible by TTYs.<sup>267</sup> The *NPRM* further asks commenters to refresh the record regarding the application of the disability accessibility provisions found in sections 251(a)(2) and 255 of the Act in the context of “T” telephony” and “computer-based equipment that replicates telecommunications functionality.”<sup>268</sup>

<sup>263</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

<sup>264</sup> See 5 U.S.C. § 603(a).

<sup>265</sup> See 5 U.S.C. § 603(a).

<sup>266</sup> In the Order, the Commission concluded that interconnected VoIP service providers must provide E911 capabilities to their customers as a standard feature of service. The Order requires providers of interconnected VoIP service to provide E911 service no matter where the customer is using the service, whether at home or away. See Order, *supra*, at para. 37.

<sup>267</sup> See 42 U.S.C. §§ 12131-34. Pursuant to the ADA requirements, telephone emergency services, including 911 services, are required to provide direct access to individuals who use TDDs (or as now commonly called, TTYs) and computer modems, without relying on outside relay services or third party services. See 28 C.F.R. § 35.162; see also 28 C.F.R. § 35.160(a) (providing that a public entity shall “take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others”); 28 C.F.R. § 35.161 (stating that “[w]here a public entity communicates by telephone with applicants and beneficiaries, TDD’s or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing or speech”).

<sup>268</sup> Disability Access Order, 16 FCC Rcd at 6483-84, para. 175; see generally *id.* at 6483-6486, paras. 173-85.

### A. Legal Basis

91. The legal basis for any action that may be taken pursuant to this *NPRM* is contained in sections 1, 4(i), 4(j), 251(e), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 251(e), 303(r), and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200-1.1216, of the Commission's rules, 47 C.F.R. §§ 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, 1.1200-1.1216.

### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

92. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.<sup>269</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>270</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>271</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>272</sup> This present *NPRM* might, in theory, reach a variety of industries; out of an abundance of caution, we have attempted to cast a wide net in describing categories of potentially affected small entities. We would appreciate any comment on the extent to which the various entities might be directly affected by our action.

93. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.<sup>273</sup>

94. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.<sup>274</sup>

95. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."<sup>275</sup> As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.<sup>276</sup> This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

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<sup>269</sup> 5 U.S.C. §§ 603(b)(3), 604(a)(3).

<sup>270</sup> 5 U.S.C. § 601(6).

<sup>271</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

<sup>272</sup> 15 U.S.C. § 632.

<sup>273</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

<sup>274</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>275</sup> 5 U.S.C. § 601(5).

<sup>276</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

96. We have described and estimated the number of small entities to which the proposed rules might apply in the FRFA, *supra*, and hereby incorporate by reference those descriptions here.

#### **D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements**

97. The *NPRM* describes a future requirement the Commission intends to adopt for an advanced E911 solution for interconnected VoIP that *must include a method for determining a user's location without assistance from the user and that there will be firm implementation deadlines for that solution.* The *NPRM* also seeks comment on what additional steps the Commission should take to ensure that providers of VoIP services provide ubiquitous and reliable E911 service in light of the technological barriers that apply to VoIP E911 services. For instance, the Commission seeks comment on how it can facilitate the development of techniques for automatically identifying the geographic location of users of VoIP services, and notes that a number of possible methods have been proposed to automatically identify the location of a VoIP user, including gathering location information through the use of: an access point inventory; a wireless access point inventory; access point mapping and triangulation; HDTV signal triangulation; and various GPS-based solutions. The Commission specifically asks whether it should require all terminal adapters or other equipment used in the provision of interconnected VoIP service sold as of June 1, 2006 to be capable of providing location information automatically, whether embedded in other equipment or sold to customers as a separate device.

98. The *NPRM* also seeks comment on whether the Commission should expand the scope of today's Order, which is limited to providers of interconnected VoIP services. The Commission tentatively concludes that a provider of a VoIP service offering that permits users to receive calls that originate on the PSTN and separately makes available a different offering that permits users to terminate calls generally to the PSTN should be subject to the rules we adopt in today's Order if a user can combine those separate offerings or can use them simultaneously or in immediate succession.

99. The Commission also seeks comment on whether it should adopt additional regulations to ensure that interconnected VoIP service customers obtain the required level of E911 services. Among other things, the Commission asks whether it should adopt E911 performance standards, require system redundancy, and require additional reporting requirements. The *NPRM* also seeks comment on whether the Commission should impose additional or more restrictive customer notification requirements relating to E911 on VoIP providers, and on the sufficiency of our customer acknowledgement requirements. It also asks whether the Commission should adopt any customer privacy protections related to provision of E911 service by interconnected VoIP service providers, perhaps similar to the privacy requirements that apply to wireline and wireless telecommunications carriers. In addition, the *NPRM* seeks comment on whether there are any steps the Commission should take to ensure that people with disabilities who desire to use VoIP services obtain access to E911 services, such as by imposing on VoIP technologies the same disability access requirements as traditional telephony facilities.

100. Finally, the Commission also asks what role states can and should play to help implement the E911 rules we adopt today. For instance, the Commission asks whether state and local governments should play a role similar to the roles they play in implementing the Commission's wireless E911 rules. The *NPRM* also requests comment on whether the Commission should take any action to facilitate the states' ability to collect 911 fees from interconnected VoIP providers, either directly or indirectly.

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

101. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives:

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>277</sup>

102. The *NPRM* specifically seeks comment on whether the Commission should expand the scope and requirements of the Order, recognizing that such an expansion may not be appropriate with regard to all VoIP service providers.<sup>278</sup> With one exception, the *NPRM* does not adopt any tentative conclusions regarding what specific regulations would apply to any entity, including small entities. We seek comment here on the effect the various proposals described in the *NPRM*, and summarized above, will have on small entities, and on what effect alternative rules would have on those entities. How can the Commission achieve its goal of ensuring that all users of VoIP services ultimately covered by the Commission's E911 rules are able to access ubiquitous and reliable E911 service while also imposing minimal burdens on small entities? What specific steps could the Commission take in this regard?

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

103. None.

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<sup>277</sup> 5 U.S.C. § 603(c).

<sup>278</sup> See *NPRM*, *supra*, paras. 56, 58.

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

*Re: IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking (WC Docket Nos. 04-36, 05-196)*

Today's action seeks to remedy a very serious problem – one quite literally of life or death for the millions of customers that subscribe to VoIP service as a substitute for traditional phone service. Currently, there are many VoIP providers that either do not provide their customers with any access to 911 emergency services or only provide 911 access in certain areas of the country. There are still other VoIP providers that only provide their customers access to a non-emergency line of public safety personnel – a line that does not connect to trained emergency operators, but instead connects to administrative staff who may or may not answer the calls. Because certain VoIP providers do not routinely connect their customers to 911 emergency operators, public safety officials across the country have been unable to address certain calls for help in a timely fashion, resulting in several tragedies. This situation is simply unacceptable.

Anyone who dials 911 has a reasonable expectation that he or she will be connected to an emergency operator; this expectation exists whether that person is dialing 911 from a traditional wireline phone, a wireless phone, or a VoIP phone. Today, we take this action to ensure this expectation is met as soon as possible.

The Order we adopt reaches the following conclusions:

- Interconnected VoIP providers must deliver all 911 calls to the customer's local emergency operator. This must be a standard, rather than optional, feature of the service.
- Interconnected VoIP providers must provide emergency operators with the call back number and location information of their customers (i.e., E911) where the emergency operator is capable of receiving it. Although the customer must provide the location information, the VoIP provider must provide the customer a means of updating this information, whether he or she is at home or away from home.
- By the effective date, interconnected VoIP providers must inform their customers, both new and existing, of the E911 capabilities and limitations of their service.
- The incumbent LECs are required to continue to provide access to their E911 networks to any requesting telecommunications carrier. They must continue to provide access to trunks, selective routers, and E911 databases to competing carriers. The Commission will closely monitor this obligation.

In short, the rules we adopt today require all VoIP providers that permit their customers to receive and place calls over the public-switched telephone network to provide their customers with 911 access. By not dictating the technical means by which providers must come into compliance, we do not impose undue regulation on these services. Although I would have liked to make these rules effective immediately, I recognize that there are technical issues that must be worked out and coordination that must take place with public safety officials before providers can comply. Accordingly, these rules will be effective 120 days from the effective date of this Order. I believe that this timeframe properly balances the nonnegotiable need of VoIP customers to access public safety with the practical need for adequate industry coordination.

To comply with our rules, VoIP providers may interconnect directly with the incumbent LECs'



911 network or purchase access to this network from competitive carriers and other third-party providers. In this regard, I note that incumbent LECs currently have a statutory obligation to provide requesting telecommunications carriers access to their 911 network. I am extremely encouraged by and commend the efforts of the Bell Operating Companies (BOCs) in permitting VoIP providers access to their 911 network. Significantly, each BOC currently offers 911 capability to VoIP providers, and some BOCs have already entered into 911 arrangements with these providers. I recognize that successful nationwide solutions are dependent on the cooperation of VoIP providers, incumbent LECs, third party vendors, and the public safety community. Such cooperation is already taking place in several major markets, and I have every reason to believe that this cooperation will continue throughout the country.

The requirement to provide access to 911 is about public safety. Because the Commission previously found that the VoIP services at issue were interstate, the Commission assumed the responsibility to ensure that basic public safety requirements are implemented and satisfied. Today, we fulfill that responsibility.

I am extremely supportive of fostering innovation and driving the adoption of new technologies, and I firmly believe that the emergency access requirements that we adopt today are compatible with these goals. Congress has mandated that the Commission promote the "safety of life and property." This obligation transcends new technologies and cannot be compromised.

While the rules we adopt today are a step in the right direction our actions today are not the end of the story. An advanced 911 solution needs to be developed that enables VoIP providers to locate their customers automatically much like wireless providers are able to locate their customers today. Every American deserves ubiquitous and reliable 911 service regardless of the technology that is being used.

The provision of access to 911 should not be optional for any telephone service provider. We need to take whatever actions are necessary to swiftly enforce these requirements to ensure that no lives are lost due to lack of access to 911.

**STATEMENT OF  
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking (WC Docket Nos. 04-36, 05-196)*

This Order promotes a critical public policy objective by ensuring that voice-over-IP (VOIP) services provide customers with E911 service. While I have long championed a light regulatory touch for IP-enabled services, I have also recognized that governmental mandates may be necessary to ensure fulfillment of core social goals such as public safety. Indeed, in the very first sentence of the Communications Act, Congress made it one of our paramount obligations to "promot[e] safety of life and property through the use of wire and radio communication." 47 U.S.C. § 151. This responsibility is particularly compelling in the context of E911, which consumers have reasonably come to expect as a core component of any telephone service.

Some VOIP providers contend that the industry is working toward solutions and mandates are not necessary to ensure the timely rollout of E911 service. Ordinarily I would be sympathetic to this view, but recent tragic failures of the current approach — which left families unable to connect to emergency services in time to save lives — underscore the need for immediate intervention. Not only must we ensure prompt deployment of E911 capabilities, but I strongly support the decision to require clear and conspicuous disclosures to consumers regarding any limitations on emergency calling capabilities. Such regulations, paired with continued forbearance from economic regulations (such as mandates concerning price and service quality), are fully compatible with the pro-investment, pro-innovation environment the Commission has worked hard to foster.

As the Order recognizes, VOIP providers cannot unilaterally provide customers with fully functioning 911 service. Incumbent LECs and public safety answering points are key parts of the equation. Thus, I am pleased that the Commission will monitor and facilitate ILECs' provision of access to selective routers and other key inputs. I applaud the efforts of those carriers that have voluntarily arranged to provide such access, and I expect others to work with VOIP providers to provide expeditious solutions in the wake of this Order. VOIP providers may choose to access 911 answering systems indirectly through CLECs or other third parties, but direct connection should also be available in light of the mandate we are imposing. Because of the incipient nature of arrangements between VOIP providers and ILECs, implementation will not be problem-free. Nevertheless, a tight compliance deadline is appropriate in light of the critical nature of the public safety interests at stake. To the extent that VOIP providers are unable to comply based on ILEC provisioning delays or other factors beyond their control, the Commission should be prepared to grant limited waivers or take other appropriate action.

While this Order represents an important step in ensuring that consumers can connect to E911 services regardless of the telephone service they choose, we all recognize that the solutions we impose are interim in nature. Relying on manually entered customer location registrations will not provide long-term reliability, particularly as mobile VOIP services become more prevalent. I appreciate the leadership of the National Emergency Numbering Association in the development of next-generation E911 solutions. NENA has worked closely with VOIP providers and other industry participants, and its continued involvement will be invaluable. I am optimistic that, while new IP networks and services pose near-term challenges for emergency calling, the new technology will enable long-term public safety enhancements by creating more efficient and feature-filled emergency response systems.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking (WC Docket Nos. 04-36, 05-196)*

Last November the Commission asserted that certain VoIP services were interstate in nature and therefore subject to exclusive FCC jurisdiction. Seen by some as a grand and glorious pronouncement, others of us warned that a simple assertion of Washington control over these services without any indication of what this meant in such critical areas as public safety, homeland security and consumer protection was hardly the stuff of bold leadership. Preemption without policy is power without responsibility.

Today the Commission attempts to put a policy into place regarding the responsibilities of VoIP providers to deliver effective E911 emergency calling services to their customers. For far too many years now, the Commission has engaged in all sorts of term-parsing and linguistic exegesis as if just finding the right descriptor for new technologies would magically create a policy framework for them. Yet here we are today still trying to determine if those who provide new calling technologies need also to provide up-to-date emergency calling and location capabilities to those who use their services. The sad fact is that we have spent so much time splitting hairs about what is a telecommunications service and what is an information service that we have endangered public safety. At some point the semantic debates must end and reality must assert itself—when customers sign up for a telephone they expect it to deliver like a telephone. When an intruder is in the house and the homeowner goes to the phone to call the police, that's a call that just has to go through.

Today we face up to this challenge. I want to commend Chairman Martin for putting this item before us today. In the discussions he and I have had about this subject, I have seen in him a genuine commitment to the idea that the safety of the people is always the first obligation of the public servant. The item we vote on today is ambitious. But being less than ambitious on public safety is simply not an acceptable option. I also want to thank each of my colleagues for their work to make this a better item.

Our work today flows directly from the first sentence of the Communications Act, which commands us to "make available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide . . . communication service . . . for the purpose of promoting safety of life and property." Sixty-five years after these words were signed into law, Congress updated them in the Wireless Communications and Public Safety Act, which designates 911 as the universal emergency telephone number in the United States.

Our decision builds on these mandates. We are putting in place rules that require interconnected VoIP providers to transmit 911 calls to a PSAP over the existing E911 network. We require interconnected VoIP providers to obtain location information from each customer about where the service will be used. We require VoIP providers to offer customers the ability to update this location information. Our goal here must be that this registration process be effectuated as quickly as possible.

Critically, we limit our requirements here to services that are capable of origination and termination on the public-switched network. This means they are directed squarely at substitutes for basic telephony. Our rules govern the kind of services that a parent or child or babysitter or co-worker will justifiably expect to work in a 911 emergency situation. By moving swiftly, we will save lives. The recent incidents in Texas and Connecticut and Florida that we have just heard about make this point with chilling and regrettable clarity.

So I am pleased to support today's decision. We must recognize, of course, that much work needs to be done to shore up the reliability of VoIP 911 services. As the decision notes, interconnected VoIP providers can obtain access to selective routers and other functionalities necessary to provide 911 capabilities through competitive carriers, third-parties, incumbent carrier tariffs, contracts with incumbent carriers, or a combination thereof. All of the Bell companies have now announced service offerings for VoIP providers. This is a positive and truly encouraging development. But access to selective routers has to be achieved and achieved soon, so if the options that we could agree on today prove insufficient, the Commission will need to step in to prevent the public safety of VoIP customers from falling through the cracks. By the same token, port blocking or discrimination could impede even the best VoIP E911 arrangements. I believe the Commission will need to be vigilant about this threat, too. Our goal must be to resolve these issues so we can avoid more horrible outcomes like those we have heard about so painfully today.

We must also do more to coordinate with state and local authorities and PSAP officials. They are the unsung heroes of 911. They have played a vital and historic role in public safety matters involving both wireline and wireless technologies. We will need to do everything within our powers to ensure they have the resources necessary to respond to emergency calls. There's no solution without them.

A 911 call is the single most important call any of us may ever make. Today we take significant steps to provide consumers with the confidence they expect when they dial for public safety. This is our obligation under the law. It is the right thing to do. I fully support it. Now let's all of us, as parties to its implementation, roll up our sleeves and get the job done.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking (WC Docket Nos. 04-36, 05-196)*

There is no higher calling or higher priority for us at the Commission than improving 911 and E911 services. I support this Order because it reaffirms the commitment of both Congress and this Commission to a nationwide public safety system, even as our communications networks migrate to new and innovative technologies like Voice-over-Internet-Protocol (or VoIP).

Since its inception in the 1960s, "911" has become synonymous with help being just a phone call away. Americans make 200 million calls to 911 each year, with a third of those calls coming from wireless phones. The ability to reach public safety officials from both their homes and from mobile devices has had a remarkably beneficial impact on American consumers. One benefit of access to wireless 911 is that Emergency Medical Services (EMS) notification times for fatal crashes have dropped an average of 30%, shaving valuable minutes off that so-called "golden hour" where help is most crucial. These achievements have come through the vital partnership between service providers, the public safety community, State and local officials, the Commission, and Congress.

This Order builds on those past efforts by ensuring the benefits of our E911 networks extend to users of interconnected VoIP services that are increasingly used by American consumers to communicate with the rest of the voice phone network. All indicators suggest that the IP-based services, like VoIP, are rapidly becoming the building block for the future of telecommunications. Somewhere between one and two million Americans currently use some form of VoIP services. These services promise a new era of consumer choice, and we must continue to promote the deployment of new technologies. At the same time, we cannot let our desire to see VoIP proliferate come at the cost of providing the best emergency services available today, nor can we afford to take any steps backward. Given the rapid adoption rate for these new technologies, it is incumbent upon us to see that VoIP providers adapt their system design and operations to offer access to the safety net on which Americans have come to rely.

Through this item, we set tight deadlines for VoIP providers to offer these public safety capabilities to their consumers. This Order responds to calls from leading public safety organizations and others who have asked us to promptly implement E911 and warned about the dangers associated with the current practices of some VoIP providers. The heart-wrenching testimony of our guests at today's open meeting, Andrea and Douglas McClanaghan, Sosomma and Peter John, and Cheryl and Joe Waller, only serves to reinforce the urgency of this matter.

With this Order, we make clear that a VoIP customer must not discover in their time of need that the 911 service for which they carefully registered actually routes them to an administrative line with a recording. Nor can Americans stop trusting the emergency response system, for it will undermine the important work that industry, the public safety community and the Commission has already accomplished in making it a reliable source of help.

To achieve these goals, the Commission adopts a broadly-stated E911 requirement that applies to all interconnected VoIP services, while allowing providers flexibility to choose among technological solutions. The Order permits VoIP providers to meet this requirement by interconnecting indirectly through a third party such as a competitive local phone company, interconnecting directly with the E911 network, or through any other solution that allows a provider to offer 911/E911 service. The Order recognizes that some VoIP services, particularly those nomadic services that allow consumers to take their VoIP service from their home to their office or their beach house, face significant implementation

challenges. Access to the trunks, selective routers, and databases of the E911 network is essential to meet the obligations set out here. Although I am pleased that this Order acknowledges the importance of this access and recognizes the important role of the E911 network providers including incumbent phone companies, it is critical that we monitor developments on this front closely. We must all remain committed to taking the necessary steps to make E911 for these services a success.

It is also important that consumers understand that there may still be limitations associated with the E911 functionality through some services. This Order recognizes that power outages, loss of a consumer's broadband connection, or the time needed to update E911 location databases may affect a consumer's ability to reach public safety through 911. To this end, this item includes a requirement that VoIP providers notify consumers about the actual E911 capabilities of their service and explores these issues further in the attached Further Notice. I am also pleased that we seek comment on what role our State commission partners can play in implementing these rules.

Beyond the important steps that we take here today, IP-based services hold great promise for E911. I appreciate the efforts that NENA and those in the VoIP industry have made to develop innovative solutions for 911/E911 services and encourage these industry participants to continue their efforts. By all accounts, these next generation capabilities have tremendous potential to improve on emergency response and medical monitoring services with video and other capabilities that will help Public Safety Answering Points (PSAPs) and first responders. These are innovations that will truly benefit all Americans, but in the meantime, it is the Commission's duty to direct VoIP providers to do more to ensure that all Americans will have access to 911 when they need it.

I want to thank Chairman Martin for his leadership and willingness to act swiftly on this issue. E911 has been one of my priorities at the Commission and I have spoken often about the need to address public safety access for VoIP customers. I know that the Chairman and my colleagues share this goal, and I look forward to our continued and mutual commitment to make our decision today a success.